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IN THE
Supreme Court of the United States.

OCTOBER TERM, A. D. 1920.

No. 111

NATIONAL BRAKE & ELECTRIC COMPANY,

Petitioner,

vs.

NEILS A. CHRISTENSEN AND ALLIS-CHALMERS
COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.

*(Petition for Certiorari filed May 24, 1919. Certiorari and Return filed
June 23, 1919. 27133.)*

BRIEF FOR PETITIONER. NATIONAL BRAKE & ELECTRIC
COMPANY.

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EDWARD OSGOOD BROWN,
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INDEX AND ANALYSIS OF BRIEF FOR PETITIONER.

	PAGE
I. CONCISE STATEMENT OF LAW AND QUESTIONS INVOLVED	1
II. FULLER STATEMENT OF THE CASE AND QUESTIONS INVOLVED	6
1. THE INSTANT WISCONSIN CASE	6
2. THE PENNSYLVANIA SUIT	9
(a) Filing of bill by Christensen et al. in Pennsylvania	9
(b) Motion of plaintiffs in Pennsylvania suit and order thereon	11
(c) Proceedings in Court of Appeals, Third Circ. Ct.	13
(d) Hearing in Third Circuit Court of Appeals	14
(e) Second patent held invalid	15
(f) Respondents took no steps to reverse	16
3. PROCEEDINGS IN WISCONSIN SUIT TO GET BENEFIT OF PENNSYLVANIA JUDGMENT	18
(a) Petitioner's application in this case to District Court and refusal	18
(b) Petitioner's application here in question	19
(c) Respondent's answer to said petition	20
4. IDENTITY OF ISSUES AND PRIVACY OF PARTIES IN THE WISCONSIN AND PENNSYLVANIA SUITS	26
(a) The identity of issues in the Wisconsin and Pennsylvania suits	26
(b) Privacy and practical identity of the defendants in the two suits	27
(c) Christensen's knowledge of such privacy as early as 1906	29
5. STATEMENT OF QUESTIONS INVOLVED	32
(a) Jurisdiction of Circuit Court of Appeals to entertain the petition herein	32
(b) Was the decree of April 21, 1914, final or interlocutory?	32
(c) Was not decree of October 1, 1917, the first final decree as to the validity of the second patent?	32
(d) Is not agreement before the Court of Appeals for the Third Circuit conclusive between parties and privies against the contention of respondents as to the finality of the decrees in the Wisconsin suit?	33

- (e) Does not such agreement estop them from such contention? 31
- (f) Were the defendants in the two suits in privity? 31
- (g) Should not the Circuit Court of Appeals at Chicago have recalled its mandate and affirming order and directed the District Court to vacate its decree of September 21, 1914? 32
- (h) What further order for the disposition of the case should be made by the Circuit Court of Appeals? . . . 32
- (i) What order should this court make? 34

III. SPECIFICATION OF ERRORS 35

1. THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED IN DENYING THE PETITION OF THE PETITIONER HEREIN. . . 35
2. IN HOLDING AND RULING THAT THE DECREE OF THE DISTRICT COURT IN WISCONSIN OF AUGUST 21, 1914, WAS A FINAL AND NOT AN INTERLOCUTORY DECREE. 35
3. IN NOT HOLDING ITS OWN ORDER AFFIRMING SAID DECREE INTERLOCUTORY 35
4. IN NOT SUSTAINING AND GRANTING THE PETITION OF THE PETITIONER HEREIN AND HOLDING AND RULING THAT IT WAS ENTITLED TO THE BENEFIT OF THE FINAL DECREE IN THE DISTRICT COURT OF PENNSYLVANIA OCTOBER 1, 1917, ADJUDGING THE SECOND PATENT INVALID. 35
5. IN NOT HOLDING THAT THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT MADE RES JUDICATA THE INVALIDITY OF SAID SECOND PATENT AND IN NOT GIVING EFFECT TO THE SAME. . . . 35
6. IN NOT REVERSING THE DECREE OF THE WISCONSIN DISTRICT COURT OF AUGUST 21, 1914, AND RECALLING AND VACATING ITS OWN ORDER OF AFFIRMANCE OF SAID DECREE. 35
7. IN NOT DIRECTING THE DISTRICT COURT IN WISCONSIN TO ADJUDGE SAID PATENT 635,280 INVALID AND TO SET ASIDE THE ACCOUNTING THEREIN PROCEEDING UNDER SAID PATENT. 35
8. IN NOT DISMISSING OR DIRECTING THE SAID DISTRICT COURT TO DISMISS THE BILL OF COMPLAINT HEREIN FOR WANT OF EQUITY AFTER THE FINAL DECREE IN PENNSYLVANIA HAD MADE RES JUDICATA THE INVALIDITY OF SAID PATENT. 35
9. OR,—IF THIS COURT RULES THAT THE DUTY OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT WAS TO GIVE PETITIONER OTHER OR DIFFERENT RELIEF THAN THAT SPECIFICALLY ASKED OR TO REMAND SAID CAUSE FOR HEARING ON UNDETERMINED ISSUES—IN NOT SO ORDERING OR REMANDING. 35

IV. BRIEF OF THE ARGUMENT.....	38
1. THIS APPLICATION TO THE CIRCUIT COURT OF APPEALS WAS PROPER AND ITS JURISDICTION IN THE PREMISES IS WELL ESTABLISHED	38
(a) <i>Respondents admit and invoke the jurisdiction of the Circuit Court of Appeals, the existence of which jurisdiction they deny</i>	38
(b) <i>The propriety of this application to the Court of Appeals and the jurisdiction of that court to entertain our motion at that stage of the proceedings is, we conceive, well grounded in the authorities.....</i>	38
(c) <i>The Circuit Court of Appeals have entertained our application and exercised its discretion in our favor..</i>	41
(d) <i>The case is within the ruling of this court in the Hart Steel case</i>	42
2. THE DECREE IN THE MILWAUKEE SUIT SUSTAINING THE SECOND PATENT, NO. 635,280, WAS INTERLOCUTORY ONLY AND NOT FINAL	44
(a) <i>The statute and this court have so designated such decrees</i>	44
(b) <i>The ruling of this court in the Potts case is a direct authority that the decree of the District Court at Milwaukee was interlocutory and not final.....</i>	47
3. THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND THE DECREE ENTERED IN PURSUANCE OF ITS MANDATE BY THE DISTRICT COURT IN THE PENNSYLVANIA SUIT CONSTITUTE THE FIRST FINAL DECISION UPON THE MERITS AS TO THE VALIDITY OF PATENT NO. 635,280. RESPONDENTS ARE ESTOPPED THEREBY, AND BY THEIR ACTION IN BRINGING IT ABOUT, FROM ASSERTING THE WISCONSIN DECREE TO BE RES JUDICATA, OR AN ESTOPPEL.....	55
4. THE IDENTITY OF ISSUES AND THE PRIVACY, AND, INDEED, PRACTICAL IDENTITY OF THE PARTIES IN THE WISCONSIN AND PENNSYLVANIA SUITS	58
(a) <i>The facts in the record show this identity and privacy clearly</i>	58
5. AS TO RESPONDENT CHRISTENSEN'S KNOWLEDGE OF SUCH PRIVACY	62
(a) <i>Such knowledge is not necessary to our case, but it existed</i>	62
(b) <i>Plaintiff Christensen is shown to have had full knowledge of such privacy</i>	64

6. THE CASE AT BAR IS ON THE SAME FOOTING AS THE HART STEEL COMPANY CASE, AND THE DUTY OF THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT IS THE SAME AS THIS COURT DECLARED THAT OF THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT TO BE,—TO GIVE EFFECT TO THE FIRST FINAL DECREE ON THE VALIDITY OF THE PATENT INVOLVED....

(a) *The Circuit Court of Appeals in the instant case should at least have recalled its mandate and set aside its affirming order of October 5, 1915, and directed the District Court to vacate its decree of September 21, 1914, adjudging said patent, No. 635,280 (i. e., the second patent) to be valid and provided for an accounting hereunder,—and to enter a decree fixing and adjudging said patent to be invalid.....*

(b) *We contend, moreover, that the Circuit Court of Appeals should—the whole record considered—have further directed the District Court to dismiss said bill for want of equity.....*

(aa) *There has been final adjudication in Pittsburgh by dismissal of bill there, which should control disposition of instant case.....*

(bb) *Patent 635,280—being eliminated from this litigation by final decree adverse to its validity, and Patent 621,324 having been surrendered and canceled—the bill of complaint cannot be sustained and should be dismissed.....*

7. THE STATUS OF THE CASE CONSIDERED IF AND WHEN THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS HEREIN REVIEWED IS REVERSED BY THIS COURT.....

(a) *The Judiciary Act contemplates that as a general rule this court shall, upon certiorari, dispose of the case, as the Circuit Court of Appeals should have done.....*

(b) *There are exceptions to this rule. This court may, in its discretion, remand the case to the lower court to pass on issues undetermined*

(c) *If the bill could be maintained on the first patent or other alleged equities of Christenson, the Circuit Court of Appeals should have instructed the District Court to vacate its decree, set aside the accounting, permit amendment of the bill and allow further pleading thereto*

The question of marking considered.....

6. THE CASE AT BAR BEING WHOLLY NOW IN THE HANDS OF THIS COURT, THE SUIT SHOULD BE DISMISSED. PLAINTIFFS' CASE IS WITHOUT EQUITY AND IS ALSO MARKED BY GROSS LACHES....	79
(1) <i>Plaintiff's responsibility for the present situation and his laches</i>	80
(a) As to Patent 621,324.....	80-83
(b) As to Patent 635,289.....	83-84
(2) <i>Valid and uncancelled letters patent are essential to plaintiff's recovery. The contention that "monopoly right" can be maintained without reference to a particular patent is unsound</i>	84
(3) <i>The case should be disposed of here and not remanded to lower courts, whose erroneous decisions upon undedicated questions in it are foreshadowed in their opinions in the record</i>	87
7. SUMMARY OF OUR CONTENTIONS	91

LIST OF CASES REFERRED TO.

Allen v. Culp, 196 U. S. 591-593.....	91
Barber Co. v. Morris, 132 F. R. 45.....	6
Barnard v. Gibson, 7 How. 659, 657.....	6
Barney v. Winona Railway, 117 U. S. 228-231.....	2
Brown v. Fletcher, 237 U. S. 349.....	2
Camp v. Geels, 250 U. S. 306-318.....	3
Cornely v. Markwald, 131 U. S. 139.....	9
Cramer v. Singer Mfg. Co. 93 F. R. 636.....	63
Croup v. Curtis Co. 228 U. S. 645.....	7
Denore v. N. Y. Trust Co. 229 U. S. 123-129.....	2
Donovan v. Penn. Co. 130 U. S. 279.....	2
Dunlap v. Scholfield, 132 U. S. 241.....	2
Feather v. Begins, 6 Best & Smith, 257.....	9
Fleming Co. v. Shierling, 245 F. R. 187.....	9
Fonte v. Parsons N. R. Co. 116 F. R. 351.....	64
Franklin Savings Bank v. Taylor, 53 F. R. 854-895.....	9
In re Gamewell Co. 73 F. R. 988.....	2
Gaylor v. Wilder, 19 Howard, 477.....	9
Greene v. U. S. Mach. Co. 124 F. R. 1.....	9
Hamilton Shoe Co. v. Wolf, 249 F. R. 51-59.....	3
Hart Steel Co. v. Railroad Supply Co. 244 U. S. 294, 42, 59, 60, 61, 64, 67.....	6
Heike v. United States, 217 U. S. 623-630.....	2
Humbston v. Stalworth, 2 Wall, 395-410.....	4
Keystone Iron Co. v. Martin, 177 U. S. 91.....	6
Kilheffer v. Herr, 17 S. & R. (Pa.) 549.....	7
Kingsbury v. Buckner, 134 U. S. 459-471.....	8
Lane v. Wells, 90 F. R. 294.....	6
Lamar v. United States, 211 U. S. 105.....	2
Luther & Moore Lumber Co. v. Knight, 217 U. S. 257.....	742
Magowan v. N. Y. Belting Co. 141 U. S. 332-337.....	6
Marden v. Campbell Co. 67 F. R. 849.....	0
Marsh v. Nichols, 128 U. S. 685.....	9
McCallan v. Carload, 217 U. S. 309.....	9
McCreary v. Penn. Canal Co. 141 U. S. 459.....	6
McGourkey v. Toledo & O. Ry. 146 U. S. 520.....	4
Messinger v. Anderson, 225 U. S. 176-1.....	2

<i>Metropolitan Water Company v. Kaw Valley Dist.</i> 228 U. S. 519.....	55
<i>Milley Elec. Co. v. Thompson-H. Co.</i> 148 F. R. 843.....	94
<i>Motion Picture Co. v. Universal Co.</i> 243 U. S. 502.....	95
<i>Ex parte National Enameling Co.</i> 291 U. S. 156.....	45
<i>Page v. Smith</i> , 10 Oregon, 419.....	57
<i>In re Potts</i> , 165 U. S. 293.....	36, 47-52, 54
<i>Potts v. Crenger</i> , 44 F. R. 689.....	38
<i>Potts v. Crenger</i> , 125 U. S. 597.....	38, 47-52, 54
<i>Potts v. Crenger</i> , 71 F. R. 574.....	38
<i>Potts v. Crenger</i> , 77 F. R. 454.....	38-49
<i>Potts v. Crenger</i> , 97 F. R. 78.....	38-50
<i>Pratt v. Wilcox</i> , 64 F. R. 589-591.....	56
<i>Robbins v. Chicago</i> , 4 Wall. 657.....	64
<i>Seymour v. White Co.</i> 92 F. R. 115.....	40
<i>Smith v. Vulcan Iron Works</i> , 165 U. S. 518.....	1
<i>Southard v. Russell</i> , 16 Howard, 547-579-1.....	40
<i>St. Germain v. Brunswick</i> , 135 U. S. 227.....	44
<i>St. Louis K. C. & Col. R. R. Co. v. Wabash R. R.</i> 217 U. S. 247.....	74
<i>Thurlough v. Kendall</i> , 92 Maine, 195.....	57
<i>Tibbets v. Shapleigh</i> , 69 N. H. 487-491.....	57
<i>United States v. Knight's Admr's</i> , 1 Black, 498-9.....	40
<i>Westinghouse Traction Brake Co. v. Christensen</i> , 243 F. R. 961-4.....	15
<i>Wheelock v. Henshaw</i> , 19 Pick. 341-345.....	57
<i>Wilgus v. Germain</i> , 72 F. R. 773.....	62
<i>Winthrop Iron Co. v. Meeker</i> , 169 U. S. 189.....	44
<i>Wollensak v. Helder</i> , 115 U. S. 96.....	84
<i>Wollensak v. Sargent</i> , 151 U. S. 221.....	84
<i>Yale Lock Co. v. Berkshire Bank</i> , 135 U. S. 342.....	45